REMARKS

This Amendment is responsive to the Final Office Action dated October 12, 2006. Applicant has amended claim 19. Claims 1-54 remain pending.

Applicant respectfully requests entry of the amendment to claim 19 after issuance of the Final Office Action. The amendment to claim 19 merely changes one occurrence of the word "a" to "the" for the purposes of clarification, and therefore raises no new issues and requires no further search. Moreover, because the amendment clarifies independent claim 19, and thereby overcomes the rejections of claims 19-37 under 35 U.S.C. § 112, second paragraph, the amendment places the claims in condition for allowance and/or in better form for appeal.

Claim Rejection Under 35 U.S.C. § 112

The Final Office Action rejected claims 19-37 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claim 19 for purposes of clarification. Specifically, Applicant has amended claim 19 the recite therapy delivered by the medical device (underlined amendment) to overcome the rejection of the Examiner. Applicant submits that claims, as amended, particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejection Under 35 U.S.C. § 102

The Final Office Action rejected claims 1-3, 8-10, 12, 13, 16, 18-21, 27-29, 32, 35-40, 43-45 and 48-54 under 35 U.S.C. § 102(b) as being anticipated by Torgerson et al. (US 5,893,883). Applicant respectfully traverses the rejection. Torgerson fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(b).

The Office Action indicated that Torgerson discloses subsequently detecting the defined event and providing therapy to a patient via the medical device according to the therapy information in response to the detection. The Office Action pointed to the disclosure of Torgerson that states, "pain can be further minimized because the stimulation signal parameters

can be adjusted to accommodate all possible daily activities."[1] However, manual adjustment of stimulation parameters by a user of a screening device to accommodate the user's daily activities, as taught by Torgerson, is not the same as subsequently detecting the defined event and providing therapy to a patient via the medical device according to the therapy information in response to the detection, as required by claim 1, and certainly not the same as a processor performing these functions, as recited by independent claims 19 and 38.

Torgerson describes a device that allows a user to input the physical activity that corresponds to a rating for stimulation parameters.[2] Torgerson does not describe the device or user subsequently detecting physical activity, and providing therapy according to the stimulation parameters corresponding to that activity in response to the detection.

Dependent claims 2-3, 8-10, 12, 13, 16, 18, 20-21, 27-29, 32, 35-37, 39-40, 43-45 and 48-54 are allowable for at least the reasons put forth above with respect to independent claims 1, 19 and 38.

Torgerson fails to disclose each and every limitation set forth in claims 1-3, 8-10, 12, 13, 16, 18-21, 27-29, 32, 35-40, 43-45 and 48-54 under 35. For at least these reasons, the Final Office Action has failed to establish a prima facie case for anticipation of Applicant's claims 1-3, 8-10, 12, 13, 16, 18-21, 27-29, 32, 35-40, 43-45 and 48-54 under 35 under 35 U.S.C. § 102(b). Withdrawal of this rejection is requested.

Claim Rejection Under 35 U.S.C. § 103

The Final Office Action rejected claims 11, 30 and 46 under 35 U.S.C. § 102(b) as anticipated by Torgerson or, in the alternative, under 35 U.S.C. 103(a) as obvious over Torgerson in view of Schallhorn (US 6,120,467). The Final Office Action also rejected claims 4-7, 17, 22-26, 33, 35-37, 41 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Torgerson in view of Schallhorn (US 6,120,467), and rejected claims 14, 15, 31, 34 and 47 under 35 U.S.C. § 103(a) as being unpatentable over Torgerson in view of Bourgeois (US 5,058,584).

[1] Torgerson et al., Col. 9-10, ll. 66-1.
[2] Torgerson et al., Col. 3, ll. 22-25.

Applicant respectfully traverses these rejections. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Dependent claims 4-7, 11, 14-15, 17, 22-26, 30-31, 33-37, 41, 42 and 46-47 are allowable for at least the reasons put forth above with respect to independent claims 1, 19 and 38. In addition, one or more of these dependent claims are also allowable because Torgerson in view of Schallhorn or Torgerson in view of Bourgeois fails to disclose or suggest the limitations recited in those claims.

For example, claim 4 requires monitoring an output of a sensor in response to receiving the command, the output of the sensor reflecting a physiological parameter of the patient, and defining the event based on the sensor output. Claim 4 also requires subsequently detecting the event which includes monitoring the output of the sensor and comparing the sensor output to the defined event.

The Final Office Action recognized that Torgerson fails to disclose "monitoring a sensor to define and [subsequently] detect the event."[3] The Office Action asserted that Schallhorn provides these teachings, that when used to modify the Torgerson device, results in duplication of the claimed invention. However, Schallhorn does not teach defining an event based on the sensor output and subsequently detecting the event. Further, Schallhorn does not teach comparing the sensor output to the defined event.

The Schallhorn device is described as directed to "monitoring and obtaining an historical representation or profile of the activity level and/or therapy adjustments of a patient."[4] Indeed, the Schallhorn disclosure describes "a processor which is programmed to translate and categorize sensor output data into a number of predetermined activity categories."[5] "A physician may then retrieve and review the activity level profile."[6]

[3] Office Action, Page 5.
[4] Schallhorn, Col. 1, ll. 64-66.
[5] Schallhorn, Col. 2, ll. 4-6.
[6] Schallhorn, Col. 2, ll. 9-10.

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In this manner, the Schallhorn device does not define an event based on the sensor output. Instead, the Schallhorn device categorizes output data into a certain number of predefined categories. Furthermore, even if categorizing the activity sensor output was incorrectly considered to be defining an event within the meaning of Applicant's claims, there is no teaching within Schallhorn of subsequently comparing later obtained sensor output to the previously obtained sensor output which defined the event.

For at least these reasons, the Final Office Action has failed to establish a prima facie case for non-patentability of Applicant's claims 4-7, 11, 14-15, 17, 22-26, 30-31, 33-37, 41, 42 and 46-47 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: 12/12/06

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